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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CASEY BLOTZER, on behalf of himself and)	Case No.
all others similarly situated,)	
)	<u>CLASS ACTION</u>
Plaintiff,)	
)	COMPLAINT FOR VIOLATIONS OF:
vs.)	
)	1. NEGLIGENCE VIOLATIONS OF THE
)	TELEPHONE CONSUMER
AMERICAN EXPRESS COMPANY)	PROTECTION ACT [47 U.S.C. §227 ET
)	SEQ.]
Defendant.)	2. WILLFUL VIOLATIONS OF THE
)	TELEPHONE CONSUMER
)	PROTECTION ACT [47 U.S.C. §227 ET
)	SEQ.]
)	
)	<u>DEMAND FOR JURY TRIAL</u>
)	
)	
)	

Plaintiff, Casey Blotzer ("Plaintiff"), on behalf of himself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of American Express Company ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer

1 Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

2 **JURISDICTION & VENUE**

3 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident
4 of California, seeks relief on behalf of a Class, which will result in at least one class member
5 belonging to a different state than that of Defendant, a company with its principal place of
6 business and State of Incorporation in New York state. Plaintiff also seeks up to \$1,500.00 in
7 damages for each call in violation of the TCPA, which, when aggregated among a proposed
8 class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
9 Therefore, both diversity jurisdiction and the damages threshold under the Class Action
10 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.
11

12 3. Venue is proper in the United States District Court for the Northern District of
13 California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does
14 business within the state of California and Plaintiff resides within this District.
15

16 **PARTIES**

17 4. Plaintiff, Casey Blotzer (“Plaintiff”), is a natural person residing in Buena Park,
18 California and is a “person” as defined by 47 U.S.C. § 153 (10).
19

20 5. Defendant, American Express Company (“Defendant”), is a nationwide credit
21 card company and is a “person” as defined by 47 U.S.C. § 153 (10).
22

23 **FACTUAL ALLEGATIONS**

24 6. Beginning in or around September of 2014, Defendant contacted Plaintiff on his
25 cellular telephone, (714) 271-3426, in an effort to sell or solicit its services.

26 7. Defendant’s telephone number showed up on Plaintiff’s cellular telephone as
27 (626) 492-4000.
28

1 8. Defendant used an “automatic telephone dialing system”, as defined by 47
2 *U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to sell or solicit its business services.

3 9. Defendant’s calls constituted calls that were not for emergency purposes as
4 defined by 47 *U.S.C. § 227(b)(1)(A)*.

5 10. Defendant’s calls were placed to telephone number assigned to a cellular
6 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 *U.S.C. §*
7 *227(b)(1)*.

8 11. Defendant never received Plaintiff’s “prior express consent” to receive calls
9 using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular
10 telephone pursuant to 47 *U.S.C. § 227(b)(1)(A)*.
11

12
13 **CLASS ALLEGATIONS**

14 12. Plaintiff brings this action on behalf of himself and all others similarly situated,
15 as a member of the proposed class (hereafter “The Class”) defined as follows:

16 All persons within the United States who received any telephone
17 calls from Defendant to said person’s cellular telephone made
18 through the use of any automatic telephone dialing system or an
19 artificial or prerecorded voice and such person had not previously
20 consented to receiving such calls within the four years prior to
the filing of this Complaint

21 13. Plaintiff represents, and is a member of, The Class, consisting of All persons
22 within the United States who received any telephone calls from Defendant to said person’s
23 cellular telephone made through the use of any automatic telephone dialing system or an
24 artificial or prerecorded voice and such person had not previously not provided their cellular
25 telephone number to Defendant within the four years prior to the filing of this Complaint.
26

27 14. Defendant, its employees and agents are excluded from The Class. Plaintiff
28 does not know the number of members in The Class, but believes the Class members number in

1 the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in
2 the expeditious litigation of the matter.

3 15. The Class is so numerous that the individual joinder of all of its members is
4 impractical. While the exact number and identities of The Class members are unknown to
5 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
6 informed and believes and thereon alleges that The Class includes thousands of members.
7 Plaintiff alleges that The Class members may be ascertained by the records maintained by
8 Defendant.
9

10 16. Plaintiff and members of The Class were harmed by the acts of Defendant in at
11 least the following ways: Defendant illegally contacted Plaintiff and Class members via their
12 cellular telephones thereby causing Plaintiff and Class members to incur certain charges or
13 reduced telephone time for which Plaintiff and Class members had previously paid by having to
14 retrieve or administer messages left by Defendant during those illegal calls, and invading the
15 privacy of said Plaintiff and Class members.
16

17 17. Common questions of fact and law exist as to all members of The Class which
18 predominate over any questions affecting only individual members of The Class. These
19 common legal and factual questions, which do not vary between Class members, and which
20 may be determined without reference to the individual circumstances of any Class members,
21 include, but are not limited to, the following:
22

- 23
- 24 a. Whether, within the four years prior to the filing of this Complaint,
25 Defendant made any call (other than a call made for emergency purposes
26 or made with the prior express consent of the called party) to a Class
27 member using any automatic telephone dialing system or any artificial or
28 prerecorded voice to any telephone number assigned to a cellular
telephone service;
 - b. Whether Plaintiff and the Class members were damages thereby, and the
extent of damages for such violation; and

1 c. Whether Defendant should be enjoined from engaging in such conduct in
2 the future.

3 18. As a person that received numerous calls from Defendant using an automatic
4 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express
5 consent, Plaintiff is asserting claims that are typical of The Class.

6 19. Plaintiff will fairly and adequately protect the interests of the members of The
7 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

8 20. A class action is superior to other available methods of fair and efficient
9 adjudication of this controversy, since individual litigation of the claims of all Class members
10 is impracticable. Even if every Class member could afford individual litigation, the court
11 system could not. It would be unduly burdensome to the courts in which individual litigation
12 of numerous issues would proceed. Individualized litigation would also present the potential
13 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense
14 to all parties and to the court system resulting from multiple trials of the same complex factual
15 issues. By contrast, the conduct of this action as a class action presents fewer management
16 difficulties, conserves the resources of the parties and of the court system, and protects the
17 rights of each Class member.

18 21. The prosecution of separate actions by individual Class members would create a
19 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
20 interests of the other Class members not parties to such adjudications or that would
21 substantially impair or impede the ability of such non-party Class members to protect their
22 interests.

23 22. Defendant has acted or refused to act in respects generally applicable to The
24 Class, thereby making appropriate final and injunctive relief with regard to the members of the
25 Class.

1 California Class as a whole.

2 **FIRST CAUSE OF ACTION**

3 **Negligent Violations of the Telephone Consumer Protection Act**
4 **47 U.S.C. §227 et seq.**

5 23. Plaintiff repeats and incorporates by reference into this cause of action the
6 allegations set forth above.

7 24. The foregoing acts and omissions of Defendant constitute numerous and
8 multiple negligent violations of the TCPA, including but not limited to each and every one of
9 the above cited provisions of *47 U.S.C. § 227 et seq.*

10 25. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*,
11 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for
12 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

13 26. Plaintiff and the Class members are also entitled to and seek injunctive relief
14 prohibiting such conduct in the future.

15 **SECOND CAUSE OF ACTION**

16 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
17 **47 U.S.C. §227 et seq.**

18 27. Plaintiff repeats and incorporates by reference into this cause of action the
19 allegations set forth above.

20 28. The foregoing acts and omissions of Defendant constitute numerous and
21 multiple knowing and/or willful violations of the TCPA, including but not limited to each and
22 every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

23 29. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227*
24 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory
25 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. §*
26
27
28

1 227(b)(3)(C).

2 30. Plaintiff and the Class members are also entitled to and seek injunctive relief
3 prohibiting such conduct in the future.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

7 **FIRST CAUSE OF ACTION**

8
9 **Negligent Violations of the Telephone Consumer Protection Act**
10 **47 U.S.C. §227 et seq.**

- 11 • As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1),
12 Plaintiff and the Class members are entitled to and request \$500 in statutory
13 damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- 14 • Any and all other relief that the Court deems just and proper.

15 **SECOND CAUSE OF ACTION**

16 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
17 **47 U.S.C. §227 et seq.**

- 18 • As a result of Defendant's willful and/or knowing violations of 47 U.S.C.
19 §227(b)(1), Plaintiff and the Class members are entitled to and request treble
20 damages, as provided by statute, up to \$1,500, for each and every violation,
21 pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- 22 • Any and all other relief that the Court deems just and proper.

23
24 Respectfully Submitted this 24th Day of June 2015.

25
26 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

27 By: _____
28 Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff